

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

JOSEPH GARCIA, #01617905,

Plaintiff,

v.

KENNETH PUTNAM, et al.,

Defendants.

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Case No. 6:19-cv-619-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Joseph Garcia, a former Texas Department of Criminal Justice inmate proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

On March 24, 2022, Judge Mitchell issued a Report recommending that the Court dismiss this lawsuit without prejudice for the failure to comply with an order of the Court. Docket No. 6. A copy of this Report was sent to Plaintiff at his last-known address with an acknowledgment card. The docket reflects that the mail was returned as undeliverable, with notations of “RTS” and “discharged.” Docket No. 7. To date, no objections to the Report have been filed.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court

examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).


Here, Plaintiff has not filed objections. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”).

Judge Mitchell’s recommendation is bolstered by the fact that the Report was returned as “undeliverable,” as Plaintiff has been released from prison but neither filed a notice of a change of address nor communicated with the Court—evincing Plaintiff’s failure to prosecute. *See Martinez-Reyes v. United States*, 2016 WL 8740494, at \*4 (S.D. Tex.—McAllen, Oct. 10, 2016) (explaining that, generally, “litigants, including prisoners, bear the burden of filing notice of a change of address in such a way that will bring attention of the court to address change.”) (quoting *Theede v. U.S. Dep’t of Labor*, 172 F.3d 1262, 1267 (10th Cir. 1999)).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 6) as the findings of this Court.

Therefore, the Court hereby DISMISSES Plaintiff's claims in this lawsuit without prejudice for Plaintiff's failure to comply with a Court order and to prosecute his case. The statute of limitations in this case is hereby **SUSPENDED** for a period of forty-five (45) days from the date of Final Judgment.

So **ORDERED** and **SIGNED** this 14<sup>th</sup> day of **April, 2022**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE